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Via Electronic Mail

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Subject: Reply Comments of the Public Advocates Office on Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2)

INTRODUCTION

Pursuant to the Wildfire Safety Division's (WSD) guidance in the May 11, 2021 *Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2)* the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments. These reply comments respond to select arguments made by the Investor-Owned Utilities (IOUs), as well as The Utility Reform Network (TURN).

BACKGROUND

Public Utilities Code Section 8389 directs the WSD to issue safety certifications to electric utilities that meet certain requirements. The purpose of safety certifications is to ensure that each IOU¹ demonstrates a commitment to safety throughout its organization,² especially with respect to wildfire risks.³ On May 11, 2021, the WSD proposed changes

¹ Many of the Public Utilities Code requirements relating to wildfires apply to "electrical corporations." See, e.g., Pub. Util. Code § 8386. These comments use the more common term "utilities" and the phrase "electrical corporations" interchangeably to refer to the entities that must comply with the wildfire safety provisions of the Public Utilities Code.

² Pub. Util. Code §§ 8389(e)(1)-8389(e)(7).

³ Pub. Util. Code §§ 8389(e)(1), 8389(e)(7).

to the timeline and criteria for the issuance of safety certifications in 2022.⁴ On June 1, 2021, opening comments were filed by five stakeholder parties⁵ as well as Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE

PG&E, SCE, and SDG&E each make erroneous arguments regarding the plain language of Public Utilities Code Section 8389 and the legislative intent of Assembly Bill (AB) 1054 regarding the WSD's safety certification guidance. The three IOUs each suggest that the plain language of Public Utilities Code Section 8389 requires the WSD to confer good standing on an IOU once it agrees to implement the findings of its latest safety culture assessment; and that the WSD has no further discretion to consider other factors in determining whether an IOU is in good standing.

For example, PG&E states that the statute creates a "safe harbor" such that any utility that agrees to implement the findings of its most recent safety culture assessment meets the "good standing" requirement.⁶ Similarly, SCE argues that "agreeing to implement the most recent safety culture assessment findings is a condition sufficient to confer good standing, without more."⁷ SDG&E argues that the WSD may not propose additional requirements for determining "good standing" and suggest that doing so is contrary to the statute and "flies in the face of AB 1054."⁸

All three IOUs misinterpret the plain meaning of Public Utilities Code Section 8389, which provides discretion to the WSD to develop further guidance and criteria for determining the utility's "good standing" and/or whether a safety certificate should be awarded. Specifically, Public Utilities Code Section 8389 sets forth the standards which a utility must meet in order to be granted a safety certification. Among these requirements is that the IOU must be "in good standing, which can be satisfied by the

⁴ Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2), May 11, 2021.

⁵ In addition to Cal Advocates, opening comments were also filed by The Utility Reform Network, Mussey Grade Road Alliance, Protect Our Communities Foundation, and the Coalition of California Utility Employees.

⁶ Pacific Gas and Electric Company's Comments on Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2), p. 4.

⁷ Southern California Edison Company's Comments on Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2), p. 7.

⁸ San Diego Gas & Electric Company Comments on Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code Section 8389(f)(2), p. 4.

electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable.” As a practical matter, the phrase “if applicable” was needed because at the time the legislation was adopted, not all utilities had participated or completed a safety culture assessment, only PG&E had done so.

The WSD’s proposed changes further elaborate how this “good standing” requirement can be met, in light of new processes and procedures. First, the WSD clarified that “good standing” could be satisfied if: (1) “The electrical corporation has participated in the WSD Safety Culture Assessment (SCA) process and committed to implement recommendations for improvement.” This requirement simply recognizes that the WSD has an SCA process. Second, the WSD provided for “Other criteria,” which, as the WSD describes, could be other safety culture assessments outside of the WSD’s evaluation, or the IOU’s role in causing a catastrophic wildfire, particularly if it was not in compliance with all WMP guidance. The WSD clarified that this additional criteria “may result in the WSD finding that the electrical corporation is not in good standing even if it has agreed to implement the WSD’s recommendations associated with its most recent SCA.”²

The IOUs’ claim is flatly contrary to the language of the statute, which states that the “good standing” requirement “*can* be satisfied” by the utility having agreed to implement the findings of its most recent safety culture assessment. The plain meaning of this language indicates that this is but one of many ways in which the IOU can satisfy the “good standing” requirement, which is itself just one of the several documented steps in Public Utilities Code Section 8389 (e) for obtaining a safety certificate. Nothing in 8389 restricts the WSD’s ability to adopt further guidance. To the contrary, the WSD is given broad powers to issue safety certifications and determine that the IOU has satisfied the requirements in Section 8389(e).

As TURN states, “the words ‘if applicable’ make clear that the good standing requirement can only be satisfied by implementation of the findings of a utility’s most recent safety culture assessment if such an assessment has taken place and has been implemented.”¹⁰ TURN further points out that the timeline adopted in Resolution WSD-011 for issuance of WSD’s 2021 safety culture assessment findings will not result in findings being available in time to consider them in granting of this year’s safety certifications. In this case, because the findings of the most recent certification are not in fact applicable, the WSD must have the discretion to use other criteria to determine good standing.

² WSD Proposed Changes to 2021 Safety Certification Guidance, May 11, 2021, p. 5.

¹⁰ The Utility Reform Network’s Comments on the WSD Proposed 2021 Safety Certification Guidance, p. 2.

Finally, SCE undercuts its own argument regarding the discretion granted by statute to WSD. SCE states that “it would be unlawful for the WSD to deny good standing if the electrical corporation agrees to implement the findings of the most recent safety culture assessment. The review should stop there.”¹¹ However, SCE goes on to directly contradict this point, by proposing its own “other criteria.” SCE proposes to replace section 2.2.3.2 of the WSD’s proposal, with the following:

2.2.3.2. The electrical corporation has not agreed to implement the findings of its most recent safety culture assessment, but has satisfied "good standing" in other ways. To the extent findings from a recent safety culture assessment are not available, or an electrical corporation **cannot otherwise agree to implement them**, then the electrical corporation may be able to satisfy "good standing" as it has in the past, such as by furnishing documentation about its safety training and other policies; its plans for handling safety incidents in light of data on the number of reported ignitions, fatalities, damaged or destroyed structures related to wildfires alleged to be caused by utility infrastructure; worker and contractor fatalities and incidents since issuance of the previous Safety Certification and their connection to wildfires; and Commission investigations and court actions, if any, related to safety violations of the electrical corporation, including ongoing and closed investigations.¹²

(Emphasis added.)

SCE seems to believe that a utility can disregard the findings of a safety culture assessment if the utility “cannot otherwise agree to implement them,” and that the WSD has authority to convey good standing through SCE’s other considerations. SCE’s proposal therefore acknowledges WSD’s discretion.

CONCLUSION

Cal Advocates continues to generally support the WSD’s Proposed Changes to the 2021 Safety Certification Guidance, subject to the clarifications it requested in opening comments.

¹¹ SCE Comments, p. 9.

¹² SCE Comments, Attachment, p. 5.

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Sincerely,

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